

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Hearing Date: June 8, 2010 @ 10:00

In re:)

) Chapter 11

304 WEST 18, LLC,)

) Bankr. Case No.: 10-10954 (MG)

) Debtor.)
_____)

**MADISON REALTY CAPITAL, L.P.'S LIMITED OBJECTION TO THE DEBTOR'S
MOTION TO AUTHORIZE THE RETENTION OF CITI-HABITATS AS A SALES AND
LEASING AGENT**

Madison Realty Capital, L.P. ("Madison"), a secured creditor of the above named Debtor and interested party to this Chapter 11 Case, by and through its attorneys, Kriss & Feuerstein LLP hereby files its limited objection to the Debtor's Application for an Order Authorizing it to Employ and Retain Citi Habitats as a Sales and Leasing Agent and states as follows:

1. Madison objects to the Debtor's Application to the extent it seeks to retain Citi Habitats as a Leasing Agent for property located at 304 West 18th Street, New York, New York 10011 (the "Property"), which is the Debtor's primary asset.

BACKGROUND

2. On or about April 26, 2007, the Debtor refinanced the existing mortgage on the Property with a \$2,700,000.00 mortgage loan in favor of Madison, which was given as security for a note of even date and amount which had a one year term.

3. Due the Debtor's failure to pay the note in full on the maturity date, Madison commenced a foreclosure action. On December 23, 2009, the Supreme Court of the State of New York entered a Judgment of Foreclosure and Sale in the sum of \$3,805,850.04 in favor of Madison and against the Debtor and ordered a foreclosure sale of the Property.

4. On February 24, 2010 the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.

5. The Debtor has not made a single post-petition payment to Madison.

6. On or about May 1, 2010, the Debtor and Madison entered into a Stipulation which was So-Ordered by this Court on May 15, 2010 (the “Stipulation”). Pursuant to the Stipulation Madison agreed that notwithstanding the Debtor’s failure to make post-petition payments that, “Madison will not file pleadings, or take any other action, prior to July 29, 2010 (the “Proposal Deadline”), seeking (1) the dismissal of, conversion of, or appointment of a trustee or examiner in the Debtor’s Chapter 11 case, (2) to lift, terminate, annul, modify, or condition the automatic stay under Bankruptcy Code section 362, or (3) to foreclose on the Real Property.”

7. The Stipulation further provides that the Debtor shall propose “a transaction with respect to the Property, whether in the form of a Chapter 11 plan or Bankruptcy Code section 363 sale or otherwise, that is acceptable to Madison in its sole and absolute discretion...” and that “If the Debtor fails to propose a transaction with respect to the Real Property, whether in the form of a Chapter 11 plan or Bankruptcy Code section 363 sale or otherwise, that is acceptable to Madison in its sole and absolute discretion prior to the Proposal Deadline ... then the Debtor agrees not to object to or otherwise contest any motion made by Madison thereafter to dismiss the Debtor’s Chapter 11 bankruptcy case.”

8. The purpose of the Stipulation was to afford the Debtor an opportunity to propose a transaction which would pay Madison in full.

LIMITED OBJECTION TO RETENTION OF LEASING AGENT

9. Madison will not consent to a transaction which involves a lease of any portion of

the Property as such a transaction will not pay Madison in full. Moreover, a new tenant's lease will be cut off by a foreclosure sale and may negatively affect potential bids at such a sale.

10. Since Madison will not consent to a transaction involving a lease of the Property, it would be futile for the Court to authorize the retention of a leasing agent and Madison strenuously objects to this request.

WHEREFORE, the Eastern respectfully requests that this Court refuse to grant the Debtor's Application to retain Citi-Habitats as a leasing agent.

Dated: May 24, 2010
New York, New York

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